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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,825	04/25/2001	Tetsuya Hirakawa	Q64165	6097

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SUGHRUE, MION, ZINN, MACPEAK & SEAS  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037-3202

EXAMINER

ALLEN, WILLIAM J

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/840,825	HIRAKAWA, TETSUYA	
	<b>Examiner</b>	<b>Art Unit</b>	
	William J. Allen	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### Prosecution History Summary

Claims 1-15 are pending per applicant's amendment filed 7/31/2006.

### *Response to Arguments*

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection. The Examiner also notes that no specific arguments were provided for the dependent claims with respect to the Harrington reference.

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 7-8, 13, and 15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute "descriptive material." Abstract ideas, *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, *Schrader*, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable. Descriptive material can be characterized as

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either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data. Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se. Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. The preamble of claim 7 should resemble the following:

A computer program product stored on a computer readable medium, said computer program product comprising executable software effective to...

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-3, 5-8, 10-11, and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bigus et al (US 6401080, herein referred to as Bigus) in view of PTO 892 reference U (herein referred to as 892u).**

**Regarding claim 1, Bigus teaches:**

*a user terminal connected to the Internet (see at least: Fig. 1-3, col. 5 lines 44-47);*

*a supplier terminal that:*

*randomly selects a purchase price of the product from a plurality of prices within a predetermined price range (see at least: col. 11 line 61-col. 12 line 57, claims 6, 51, and 52); and*

*presents the selected price on the user terminal together with a predetermined term of validity, the predetermined term of validity being the time period during which the product is available for purchase, by the user, at the randomly selected price (see at least: col. 8 lines 59-65, Fig. 5).*

Bigus teaches all of the above and further teaches the use of an intelligent agent service to facilitate negotiations and prevent parties from gaining an advantage by

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randomizing negotiations (see at least: abstract, Fig. 2). Bigus, however, does not expressly teach wherein the supplier terminal *charges a commission fee*. 892u teaches *charging a commission fee* based on the base (i.e. standard) price (see at least: Pages 1 and 3). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Bigus to have included charging a *commission fee to the user* as taught by 892u in order to provide the agent or agent provider with a monetary incentive (commission = profit for the agent) for completing negotiations with a potential purchaser (see at least: 892u, Page 3).

**Regarding claim 2**, Bigus teaches all of the above and further teaches the use of an intelligent agent service to facilitate negotiations for purchasing (see at least: abstract, Fig. 2). Bigus additionally teaches using an actual value (i.e. standard value) of a purchasable product (see at least: col. 10 lines 18-25). Bigus, however, does not expressly teach wherein the supplier terminal where the *commission fee is determined by multiplying a predetermined rate to the standard price*. 892u teaches *charging a commission fee* by multiplying the 2.5% by the base (i.e. standard) price (see at least: Pages 1 and 3). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Bigus to have included charging a *commission fee to the user* as taught by 892u in order to provide the agent or agent provider with a monetary incentive (commission = profit for the agent) for completing negotiations with a potential purchaser (see at least: 892u, Page 3).

**Regarding claim 3**, Bigus further teaches *an audit authority terminal for supervising the setting of the prices by ht supplier terminal* (see at least: col. 23 line 62-col. 24 line 18, Fig. 5-9, claim 4).

**Regarding claims 5-8**, the limitations set forth in claims 5-8 closely parallel the limitations set forth in claims 1-3. Claims 5-8 are rejected for at least the reasons above regarding claims 1-3.

**Regarding claim 10**, Bigus in view of 892u teaches *wherein the commission is non-refundable* (see at least: 892u, Pages 1 and 3). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Bigus to have included charging a *commission fee wherein the commission is non-refundable* as taught by 892u in order to provide the agent or agent provider with a monetary incentive (commission = profit for the agent) for completing negotiations with a potential purchaser (see at least: 892u, Page 3).

**Regarding claim 11**, Bigus further teaches *wherein the term of validity contains an expiration date, such that the user cannot purchase the product after the expiration date* (see at least: col. 8 lines 59-65, Fig. 5). The Examiner notes that a timer having an expiration time is analogous to an expiration date.

**Regarding claims 14 and 15**, the limitations of claims 14 and 15 closely parallel the limitations of claim 11. Claims 14 and 15 are rejected for at least the same reasons as listed above in regards to claim 11.

**5. Claims 4, 9, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bigus in view of 892u as applied to claims 1-3, 5-8, 10-11, and 14-15 above, and further in view of Harrington et al. (6161099, herein referred to as Harrington).**

**Regarding claim 4**, Bigus in view of 892u teaches all of the above as noted but does not expressly teach *a reselling function for reselling the privilege to purchase the product at the price presented by the supplier terminal to a third person*. Harrington teaches *reselling function for reselling the privilege to purchase the product at the price presented by the supplier terminal to a third person* (see at least: col. 2 lines 49-60, col. 6 lines 10-26). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Bigus in view of 892u to have included *reselling function for reselling the privilege to purchase the product at the price presented by the supplier terminal to a third person* as taught by Harrington in order to provide a system that allows for the greatest amount of funds to be raised for the selling entity (see at least: col. 6 lines 10-26).



**Regarding claims 9, 12, and 13,** Bigus in view of 892u teaches all of the above as noted and further teaches documentation of transaction history(see at least: Bigus, Fig. 12). Bigus in view of 892u, however, does not expressly teach *wherein a price history of the product is presented on the user terminal* together with the selected price of the product. Harrington teaches *wherein a price history of the product is presented on the user terminal* together with the selected price of the product (see at least: col. 7 lines 34-53). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Bigus in view of 892u to have included *reselling function for reselling the privilege to purchase the product at the price presented by the supplier terminal to a third person* as taught by Harrington in order to provide a system that allows for the greatest amount of funds to be raised for the selling entity (see at least: col. 6 lines 10-26).

**Conclusion**


- PTO 892 V discloses commissions based on base ticket prices
- PTO 892 W discloses commission based motivation for sales representatives

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Allen whose telephone number is (571) 272-1443. The examiner can normally be reached on 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

William J. Allen  
Patent Examiner  
August 10, 2006

  
Primary Examiner